

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ALBERICI CONSTRUCTORS, INC.,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:11-CV-744 (CEJ)
)	
CLONE JEFFERSON OLIVER, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before the Court on the motion of third-party defendants Daniel Andrepont and Cecchi Enterprises, LLC. to dismiss the claims of third-party plaintiff Group Contractors, LLC. ("Group") pursuant to Federal Rules of Civil Procedure 8(a)(2), 9(b), and 12(b)(6), or in the alternative, for a more definite statement pursuant to Rule 12(e). Group opposes the motion.

Plaintiff Alberici Constructors, Inc. brings suit against its former Vice President of Construction, Clone Jefferson Oliver ("Oliver"), and subcontractors. Plaintiff alleges that defendants engaged in a fraudulent scheme to divert profits from plaintiff. Oliver encouraged subcontractors to submit improperly inflated invoices, price quotes, and change orders to plaintiff. Plaintiff would pay the price listed on the invoice and the subcontractors would then pay part of the proceeds to a shell corporation created by Oliver for the purpose of diverting and concealing proceeds.

Defendant/third-party plaintiff Group was a subcontractor for Alberici, and allegedly submitted change orders and invoices for services outside the scope of the subcontract. Third-party defendants provided engineering services in connection with the Group subcontract. Alberici alleges that these engineering services were outside

the scope of the Group subcontract and improperly included in Group's change orders.

Group impleaded third-party defendants, alleging that:

4. On information and belief, Clone Jefferson Oliver, acting with apparent authority of Alberici, Daniel Andrepont and Cecchi Enterprises, LLC. misled Group in the belief that Daniel Andrepont and Cecchi Enterprises, LLC. were providing services to Alberici in connection with the Arlington County Project.

5. On information and belief, in the main demand, plaintiff, Alberici, has alleged those services were not rendered to the benefit of Alberici in connection with the Arlington County Project. [Doc. # 107, p. 6].

These two sentences constitute the entirety of Group's allegations against third-party defendants.

Group's claims against third-party defendants sound in fraud, and are subject to the heightened pleading standard of Fed.R.Civ.P. 9(b). However, Group's factual allegations against third-party defendants are devoid of detail, and do not explain the basis of third-party defendants' liability. These allegations do not meet the standard set out by Rule 8(a)(2) of a "short and plain statement of the claim showing that the pleader is entitled to relief..." let alone the heightened standard of Rule 9.


This is a complicated case, involving numerous defendants, claims, and cross-claims. Clarity of pleadings is of the utmost importance in such a case. Rather than dismissing Group's claims outright, the Court will allow Group the opportunity to amend its third-party complaint to comply with the Federal Rules of Civil Procedure.

Accordingly,

IT IS HEREBY ORDERED that third-party defendants' motion to dismiss Group's third-party complaint [Doc. # 107] is **denied**.

IT IS FURTHER ORDERED that third-party defendants' motion for a more definite statement [Doc. #107] is **granted**.

IT IS FURTHER ORDERED that third-party plaintiff Group Contractors, LLC, shall have until June 10, 2013, to file an amended third-party complaint.


CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE

Dated this 8th day of May, 2013.